

**8111 EMINENT DOMAIN: ACCESS RIGHTS**

The term “right of access” has been used during the trial. Right of access means a right of the owner to enter or leave his or her property by using an abutting street or highway, without obstruction.

**COMMENT**

This instruction and comment were approved in 2006. The comment was updated in 2015 and 2020. The 2020 revision updated case law citations. This revision was approved by the Committee in January October 2022; it added to the comment.

Wis. Stat. § 32.09(6)(b) and Wis. Stat. § 66.1035.

The following statutes and cases address one or more of the issues where access to a property is removed, modified, restricted or substituted and provide a basis from which a specific instruction may be drafted.

Wis. Stat. § 84.25; Wis. Stat. § 84.295; Wis. Stat. § 84.29; Wis. Stat. § 83.027; see National Auto Truckstop, Inc. v. WISDOT, 263 Wis. 2d 649, 665 N.W.2d 198 (2003); Narloch v. Department of Transportation, 115 Wis. 2d 419, 430, 340 N.W.2d 542 (1983); Seefeldt v. WISDOT, 113 Wis. 2d 212, 336 N.W.2d 182 (1983); Surety Savings & Loan Association v. WISDOT, 54 Wis. 2d 438, 195 N.W.2d 464 (1972); Schneider v. State of Wisconsin, 51 Wis. 2d 458, 187 N.W.2d 172 (1971); Hastings Realty Corp. v. Texas Co., 29 Wis. 2d 305, 313, 137 N.W.2d 79 (1965); Stephan Auto Body v. State Highway Comm., 21 Wis. 2d 363, 124 N.W.2d 319 (1963).

**Loss of Direct Access; Temporary Limited Easement.** For a decision involving the loss of direct access and for a temporary limited easement, see 118<sup>th</sup> Street Kenosha, LLC v. Wisconsin Dept. of Transportation, 2014 WI 125, 359 Wis.2d 30, 856 N.W.2d 486.

[**Note:** In 118th Street, the Wisconsin Supreme Court assumed without deciding that a temporary limited easement was compensable under Wis. Stat. § 32.09(6g). However, in Backus v. Waukesha County, 2022 WI 55, ¶19, 402 Wis.2d 764, 976 N.W.2d 492, the court found that a “...reasonable reading of 32.09(6g) is that it applies only to easements that continue to exist beyond the completion of a public improvement project. Therefore, § 32.09(6g) does not apply to TLEs, which must instead be compensated under constitutional and common law principles.”]